

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

ANNE SCHEUER-FRAZON,

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF
BUFFALO, NEW YORK; AND ALL SAINTS
PARISH CENTER.

Defendants.

Index No.

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Anne Scheuer-Frazon, by her attorneys Weitz & Luxenberg PC, brings this action against The Roman Catholic Diocese of Buffalo, New York, and All Saints Parish Center alleging, on personal knowledge as to herself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
3. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that one or more Defendants reside in this County and a substantial part of the events and omissions giving rise to the claim occurred in Erie County.

PARTIES

4. Plaintiff Anne Scheuer Frazon (“Plaintiff”) is an individual residing in Niagara County, New York.

5. Defendant the Roman Catholic Diocese of Buffalo, New York (“Diocese of Buffalo”) is a religious corporation organized pursuant to the Religious Corporations Law, with its principal office at 795 Main Street in Buffalo, Erie County, New York.

6. At all relevant times, the Diocese of Buffalo created, oversaw, managed, controlled, directed and operated parishes or churches of the Diocese of Buffalo including All Saints Parish Center.

7. At all relevant times, the Diocese of Buffalo managed, supervised, employed, directed and/or controlled all priests assigned to work in parishes or churches of the Diocese of Buffalo including Father James P. Hayes.

8. At all relevant times, priests assigned to the Diocese of Buffalo were agents, managers, directors, or employees of the Diocese of Buffalo.

9. Defendant All Saints Parish Center, (“All Saints Church”) is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 127 Chadduck Avenue, Buffalo, New York.

10. At all relevant times, All Saints Church was and has been a Roman Catholic Church or parish within and under the authority of the Diocese of Buffalo which created, oversaw, managed, controlled, directed and operated All Saints Church.

11. At all relevant times, priests assigned to All Saints Church were agents, managers, directors, or employees of All Saints Church and the Diocese of Buffalo.

12. At all relevant times, All Saints Catholic School was a Roman Catholic parochial school within and under the authority of the Diocese of Buffalo and created, overseen, managed, controlled, directed and operated by All Saints Church.

FACTS COMMON TO ALL CLAIMS

13. Plaintiff and her family were parishioners of and attended All Saints Church in Buffalo, New York when she was a child.

14. Plaintiff was enrolled as a student at All Saints Catholic School in Buffalo, New York for Sixth Grade, Seventh Grade, and Eighth Grade.

15. During the times relevant to the allegations set forth herein, Defendants Diocese of Buffalo and All Saints Church were responsible for overseeing, managing, controlling, directing and operating All Saints Catholic School.

16. Father James P. Hayes was a priest assigned by Defendant Diocese of Buffalo to All Saints Church.

17. Through his position at, within, or for the other Defendants, Defendant Father James P. Hayes was put in direct contact with Plaintiff, a minor parishioner of the Diocese of Buffalo.

18. In approximately 1972, Plaintiff began attending All Saints Catholic School as a Sixth Grade Student and was authorized by the School to work in the rectory of All Saints Church to minimize her tuition payments.

19. In approximately 1973, when Plaintiff was approximately twelve or thirteen years of age, she was repeatedly sexually abused by Father James P. Hayes in the rectory at All Saints Church.

20. Father James P. Hayes used these encounters, gained through his position at All Saints Church, which granted him access to Defendants' young parishioners, when Plaintiff was approximately twelve or thirteen years of age, to sexually assault, sexually abuse, and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

21. Father James P. Hayes continued to sexually abuse Plaintiff until Plaintiff quit the rectory position months later.

22. At all times material hereto, Father James P. Hayes was under the management, supervision, employ, direction and/or control of Defendants Diocese of Buffalo and All Saints Church.

23. Defendants Diocese of Buffalo and All Saints Church, knew, and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father James P. Hayes who sexually abused Plaintiff.

24. Defendants had the responsibility to manage, supervise, control and/or direct priests who served at All Saints Church, and specifically had a duty not to aid pedophiles such as Father

James P. Hayes by allowing them and/or, assigning, maintaining, and/or appointing them to positions with, access to minors.

25. Defendants Diocese of Buffalo and All Saints Church had a duty to the Plaintiff to ensure that Defendants did not offer opportunities for pedophiles to approach and assault vulnerable children. Defendants knew and/or should have known that Father James P. Hayes used his position at All Saints Church to harm minor children, including Plaintiff, and to form an acquaintance that could be, and was, used to provide opportunities for sexual abuse.

26. Plaintiff suffered personal physical and psychological injuries and damages as a result of Defendants' actions, as well as other damages related thereto, as a result of her childhood sexual abuse.

27. As a direct result of Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Defendants' sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm she suffered as a result.

CAUSES OF ACTION**FIRST CAUSE OF ACTION****Negligent Hiring/Retention/Supervision/Direction****(As to All Defendants)**

38. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

29. Defendants Diocese of Buffalo and All Saints Church at all relevant times represented or otherwise indicated to parishioners of All Saints Church and parents of All Saints Catholic School that minor children would be physically safe while in the presence of priests assigned to All Saints Church. Defendants Diocese of Buffalo and All Saints Church entered into an express and/or implied duty to provide that when Plaintiff was a minor and left in the presence of a priest assigned to All Saints Church Plaintiff would be kept reasonably safe and that that priests would not sexually abuse Plaintiff.

30. Defendants Diocese of Buffalo and All Saints Church owed a duty of care to all minor persons, including Plaintiff, who were likely to come in contact with Father James P. Hayes, to ensure that Father James P. Hayes did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

31. Defendants Diocese of Buffalo and All Saints Church knew or should have known of Father James P. Hayes propensity for the conduct which caused Plaintiff's injuries prior to, or about the time of the injuries' occurrence.

32. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

33. Father James P. Hayes sexually assaulted, sexually abused and/or had sexual contact with Plaintiff while assigned to All Saints Church.

34. Defendants Diocese of Buffalo and All Saints Church negligently hired, retained, directed, and supervised Father James P. Hayes as they knew or should have known that Father James P. Hayes posed a threat of sexual abuse to children.

35. Defendants Diocese of Buffalo and All Saints Church were negligent in failing properly to supervise Father James P. Hayes.

36. At all times material hereto, Defendants Diocese of Buffalo and All Saints Church were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

37. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

38. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally, and/or in the alternative, for compensatory damages, and punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION**Negligence/Gross Negligence****(As to All Defendants)**

39. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

40. At all times material hereto, with regard to the allegations contained herein, Father James P. Hayes was under the supervision, employ, direction and/or control of Defendants Diocese of Buffalo and All Saints Church.

41. Defendants Diocese of Buffalo and All Saints Church owed Plaintiff, at all relevant times, a minor, a duty to protect her from Father James P. Hayes' sexual deviancy and the consequent damages, both prior to and/or subsequent to Father James P. Hayes' misconduct.

42. Defendants Diocese of Buffalo and All Saints Church knew, or were negligent in not knowing, that Father James P. Hayes posed a threat of sexual abuse to children.

43. The acts of Father James P. Hayes described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with the Defendants Diocese of Buffalo and All Saints Church.

44. Defendants Diocese of Buffalo and All Saints Church's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

45. Defendants Diocese of Buffalo and All Saints Church gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others; failed adequately to supervise the activities of Father James P. Hayes; permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, with instrumentalities under their control; and allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

46. At all times material hereto, Defendants Diocese of Buffalo and All Saints Church were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

47. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

48. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION**Breach of Non-Delegable Duty****(As to All Defendants)**

49. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

50. Plaintiff, when she was a minor, was placed in the care and supervision of the Defendants Diocese of Buffalo and All Saints Church for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in educational, religious, youth, and recreational activities. There existed a non-delegable duty of trust between Plaintiff and Defendants.

51. Plaintiff was a vulnerable child when placed within the care of the Defendants Diocese of Buffalo and All Saints Church.

52. As a consequence, Defendants Diocese of Buffalo and All Saints Church were in the best position to prevent Father James P. Hayes' sexual abuse of Plaintiff, to learn of said sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from Father James P. Hayes' sexual abuse of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

53. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Diocese of Buffalo and All Saints Church, Defendants breached their non-delegable duty to Plaintiff.

54. At all times material hereto, Father James P. Hayes was under the supervision, employ, direction and/or control of Defendants Diocese of Buffalo and All Saints Church.

55. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

56. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION

Breach of Fiduciary Duty

(As to All Defendants)

57. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

58. While she was a minor, Plaintiff was entrusted by her parents to the control and supervision of Defendant All Saints Church. During the time Plaintiff was entrusted to All Saints Church she was subject to contact with Father James P. Hayes, and both were under the supervision and control of Defendant Diocese of Buffalo.

59. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Buffalo and All Saints Church. This relationship is based on the entrustment of the Plaintiff while she was a minor child to the care and supervision of Defendants Diocese of Buffalo and All Saints Church. This entrustment of the Plaintiff to the care

and supervision of Defendants Diocese of Buffalo and All Saints Church, while the Plaintiff was a minor child, required Defendants Diocese of Buffalo and All Saints Church to assume a fiduciary relationship and to act in the best interests of the Plaintiff and to protect her due to her infancy and vulnerability.

60. Pursuant to their fiduciary relationship, Defendants Diocese of Buffalo and All Saints Church were entrusted with the well-being, care, and safety of Plaintiff.

61. Pursuant to their fiduciary relationship, Defendants Diocese of Buffalo and All Saints Church assumed a duty to act in the best interests of Plaintiff.

62. Defendants Diocese of Buffalo and All Saints Church breached their fiduciary duties to Plaintiff.

63. At all times material hereto, Defendants Diocese of Buffalo and All Saints Church were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

64. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

65. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION**Negligent Infliction of Emotional Distress****(As to All Defendants)**

66. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

67. As described above, the actions of Defendants Diocese of Buffalo and All Saints Church their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

68. Defendants Diocese of Buffalo and All Saints Church's actions and/or inactions endangered Plaintiff's safety and caused her to fear for her own safety.

69. As a direct and proximate result of Defendants Diocese of Buffalo and All Saints Church's actions and/or inactions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered severe injuries and damages described herein; including but not limited to mental and emotional distress.

70. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION**Breach of Duty *in Loco Parentis*****(As to All Defendants)**

73. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

74. While she was a minor, Plaintiff was entrusted by her parents to the control and supervision of All Saints Church. During the time that Plaintiff was entrusted to Defendant All Saints Church, and subject to contact with Father James P. Hayes, both were under the supervision and control of Defendant Diocese of Buffalo. These Defendants owe – and owed – a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

75. Defendants Diocese of Buffalo and All Saints Church breached their duty to act *in loco parentis*.

76. At all times material hereto Defendants Diocese of Buffalo and All Saints Church were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

77. As a direct result of Defendants Diocese of Buffalo and All Saints Church's conduct, Plaintiff has suffered the injuries and damages described herein.

78. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proven at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction; extent permitted by law;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: August 14, 2019

New York, New York

Respectfully Submitted,

/s/ Samantha Breakstone
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ATTORNEY'S VERIFICATION

STATE OF NEW YORK)

) SS:

COUNTY OF ERIE)

I, the undersigned, am an attorney admitted to practice in the Courts of New York State, and say that:

I am the attorney of record or of counsel with the attorney(s) of record for the plaintiff.

I have read the annexed SUMMONS AND VERIFIED COMPLAINT and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief. As to those matters, I believe them to be true. My belief, as to those matters therein not stated upon knowledge is based upon the following:

Interviews and/or discussions held with the plaintiff(s) and papers and/or documents in the file.

The reason I make this affirmation instead of the plaintiff is because said plaintiff resides outside the county from where your deponent maintains his office for the practice of law.

Dated: New York, NY

August 14, 2019



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